

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

99-E-0410

IN THE MATTER OF THE LIQUIDATION OF  
TUFTS HEALTH PLAN OF NEW ENGLAND, INC.

**MOTION FOR APPROVAL OF PLAN OF LIQUIDATION,  
FUNDING AND SETTLEMENT AGREEMENT,  
AND RELATED AGREEMENTS AND DOCUMENTS**

Paula T. Rogers, Commissioner of the Department of Insurance of the State of New Hampshire, solely in her capacity as the Liquidator of Tufts Health Plan of New England, Inc., (the "Liquidator"), by her attorneys, moves for the entry of an order approving the Plan of Liquidation (the "Plan of Liquidation"), and a certain Funding and Settlement Agreement dated as of November 14, 2000 (the "Funding and Settlement Agreement"), including all other documents and agreements attached to and incorporated into the Funding and Settlement Agreement, all of which are filed contemporaneously herewith. In support of her motion, the Liquidator submits her affidavit attached hereto as Exhibit A, and states as follows:

1. Tufts Health Plan of New England, Inc. ("TNE") is a for profit corporation organized, existing and licensed as a health maintenance organization under the laws of the State of New Hampshire.

2. On November 22, 1999, this court entered an order placing TNE in rehabilitation, pursuant to the provisions of RSA 402-C. This court appointed Charles Schneider as Special Deputy Rehabilitator, for the purpose of attempting to rehabilitate or sell TNE. After approximately one month of concentrated efforts, however, it appeared that a successful rehabilitation of TNE was not in prospect.

3. On January 3, 2000, in response to a Petition for Liquidation filed on December 20, 1999, this court ordered TNE placed in liquidation pursuant to the provisions of RSA 402-C, and converted this case to a liquidation proceeding (the “Liquidation Proceeding”). The Liquidator was duly appointed, and commenced the process of extending and terminating coverage under TNE’s existing policies of insurance; providing for payment for covered services during the extended period of insurance coverage authorized under applicable law; establishing the processes and procedures by which claims could be asserted against TNE, and marshalling and recovering the assets of TNE’s estate, all for the benefit of TNE’s members, subscribers, policyholders and creditors.

4. At the time the Petition for Liquidation was filed, one of TNE’s largest creditors, Bath Iron Works Corporation (“BIW”), had already commenced litigation against TNE and its parent and affiliated corporations, which litigation was then pending in the United States District Court for the District of Maine. The other named defendants included Tufts Associated Health Plans, Inc. (“TAHP”); Tufts Associated Health Maintenance Organization, Inc. (“TAHMO”); and TAHMO Holdings, Inc. BIW asserted damages of \$40 million arising out of the anticipated breach of its multi-year agreement with TNE.

5. The claims asserted by BIW were, in the Liquidator’s judgment, claims most properly asserted by the Liquidator on behalf of all creditors of TNE, including BIW. During the course of the Liquidation Proceeding, the Liquidator asserted her exclusive standing to pursue those and other theories of recovery against TNE’s parent and affiliated organizations and entities (collectively “THP”). To that end, on March 31, 2000, the Liquidator commenced a civil proceeding in this court entitled *Rogers vs. Tufts Health Plan of New England, Inc., et al.*, (Docket Number 00-C-170) (the “Liquidator’s Action”), alleging in substance that THP and

other related individuals were and are legally and properly responsible for the obligations of TNE, including the costs and expenses associated with the Liquidation Proceeding. THP and the related individuals named as defendants in the Liquidator's Action have consistently and publicly denied any such liability.

6. After the commencement of the Liquidator's Action, and in the hopes of avoiding a course of protracted and expensive litigation over the various issues posed therein, the Liquidator and THP negotiated and executed (subject to approval of this court) the Funding and Settlement Agreement, in respect of which the Liquidator proposed the Plan of Liquidation. Together, the Plan of Liquidation and the Funding and Settlement Agreement represent a comprehensive and integrated resolution of the issues raised in the Liquidator's Action and associated with BIW's claim, as well as many of the issues involved in administering TNE's estate. The Funding and Settlement Agreement incorporates the following agreements and documents as its exhibits:

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| A | Settlement Agreement and Releases and Covenants Not to Sue between Liquidator, BIW and THP        |
| B | Proof of Claim Process Flow Chart and Narrative Addendum, including Pre-NOD Option and Disclosure |
| C | Performance Standards and Criteria for Administrative Services                                    |
| D | Administrative Budget   |
| E | Required Reports to Liquidator  |
| F | Plan of Liquidation   |
| G | Proposed Order Approving Plan of Liquidation  |

7. These documents are complex, and the Liquidator urges all members, subscribers, policyholders, creditors, and others holding claims against TNE to carefully review them in their entirety. By way of summary, the Plan of Liquidation and the Funding and Settlement Agreement, once approved, fully implemented and performed, will enable the Liquidator to pay to holders of claims against TNE the full amount of their claims (as allowed by this court), without the attendant expense, delay and risks associated with litigating the Liquidator's Action to its ultimate conclusion. Three key components of the Funding and Settlement Agreement are as follows:<sup>1</sup>

A. RSA 402-C:44 classifies Claims in their order of priority of distribution. THP shall fully subordinate its unpaid Claims to all other Allowed Claims in Classes One Through Five, thereby facilitating payment of those other Allowed Claims in full. THP's Allowed Claims consist of:

- (1) A Class One Claim for services rendered and to be rendered to the Liquidator (including in her predecessor capacity as Rehabilitator) after the November 22, 1999 Rehabilitation Order through the Conclusion of Services. As of June 30, 2000, the accrued amount of this Class One Claim is \$4,183,358, net of payments received;<sup>2</sup> and
- (2) A Class Five Claim for administrative and other services rendered to TNE prior to the entry of the Rehabilitation Order, in the amount of \$6,440,972.

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<sup>1</sup> All capitalized terms used herein shall have the meaning ascribed to them in the Plan of Liquidation and the Funding and Settlement Agreement. In the event of any inconsistency between this motion and those documents, the applicable terms of those documents shall govern.

<sup>2</sup> TNE has no employees, and has always relied on TAHMO for administrative services. The Liquidator made payments to TAHMO during the early months of the Liquidation Proceeding pursuant to the Administrative Services Agreement between TAHMO and the Liquidator, but as their settlement discussions proceeded, TAHMO agreed to accrue its Class One Claim for administrative services to the Liquidator.

B. THP shall guarantee payment in full of all Allowed Claims in Classes One Through Five. For approximately eighteen months from the Effective Date, the THP Guaranty will be secured by a deposit in the amount of \$3.5 million, to be held in a custodial account at Citizens Bank New Hampshire for the benefit of the Liquidator, and may be drawn upon under certain circumstances to pay Allowed Claims in the event that the cash on hand in TNE's estate shall first fall below \$2 million. THP has also agreed to pay the Liquidator approximately \$1.8 million for stock held by TNE in Tufts Insurance Company ("TICO"), a TNE subsidiary, which shall be conveyed to THP free and clear of any Claims of TNE creditors, without representations or warranties by the Liquidator.

C. BIW's Claim, filed against TNE in the approximate amount of \$21.8 million, will be allowed as a Class 2 Claim in a compromised amount which, net of a premium receivable due TNE, will result in a payment to BIW of \$14 million. In exchange for payment on its compromised Claim, BIW releases any further Claims it may have against TNE's estate and THP, including all of the individuals and entities named as defendants in the Liquidator's Action.

8. Other provisions of the Funding and Settlement Agreement define various aspects of the Liquidator's administration of TNE's estate, including the process by which certain claims will be reviewed and adjudicated. In order to promote efficient administration of the estate, Exhibit B to the Funding and Settlement Agreement outlines a "Pre-NOD" process whereby claimants may (but need not) opt for expedited payment of their Claims in lieu of a formal adjudication and issuance of a Notice of Determination (an "NOD"), if the amount of the Claim falls within certain specified criteria. Claims not susceptible to or resolved through the Pre-NOD Process will be administered, adjudicated and paid in accordance with the procedures generally

applicable under RSA 402-C, the Funding and Settlement Agreement and the Plan of Liquidation.<sup>3</sup>

9. The Funding and Settlement Agreement provides standards, consistent with RSA 402-C:37, for the filing and amendment of Proofs of Claims, including those applicable to Proofs of Claims filed after the July 10, 2000 bar date established by the Liquidator. In addition, in order to avoid prejudice to the orderly and expeditious administration of the estate, it provides, and the Liquidator requests, that the court establish a deadline of thirty days after the Effective Date,<sup>4</sup> after which the filing of Proofs of Claims shall no longer be permitted.

10. The Plan of Liquidation and the Funding and Settlement Agreement avoid the expense, time, resources and necessary uncertainties of litigation, and provide for expeditious administration and full payment of all Allowed Claims in Classes One through Five, and the subordinated payment of some portion of the THP Allowed Claims. The Liquidator has taken into account such information concerning THP's current financial condition as has been made available to her, as well as statements made to her by Commissioner Linda L. Ruthardt, the Commissioner of Insurance of the Commonwealth of Massachusetts, concerning THP's present capacity to perform under the THP Guaranty if called upon to do so. The Liquidator and THP believe that the existing assets in TNE's estate, along with full implementation of the Funding and Settlement Agreement, will allow the Liquidator to pay all unsubordinated Allowed Claims in Classes One Through Five in full. Commissioner Ruthardt confirmed her position with

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<sup>3</sup> Certain Claims held by Rhode Island claimants are secured by Special Deposits held in an ancillary receivership pending in Rhode Island. Once administered and adjudicated, these Allowed Special Deposit Claims will be paid in accordance with Section 2.3 of the Plan of Liquidation, with any excess proceeds of the Rhode Island Special Deposits being available to pay general Allowed Claims in Classes One through Five.

<sup>4</sup> The Effective Date is the date upon which the order approving the Plan of Liquidation and the Funding and Settlement Agreement becomes final and no longer subject to appeal.

respect to THP's overall performance under the Funding and Settlement Agreement in a letter to the Liquidator dated November 17, 2000, a copy of which is attached hereto as Exhibit B.

11. Neither the Liquidator, nor Commissioner Ruthardt, nor THP can provide absolute assurance that the financial condition of THP over time will always be such as to enable THP to fully perform the THP Guaranty beyond the \$3.5 million Deposit, and holders of Claims against TNE must assume any ultimate risk that in the event THP should be unable to fully perform under the THP Guaranty, distributions to holders of Claims could be less than the full amount of their Allowed Claims. The Liquidator has balanced that risk, as she perceives it, against the benefits afforded by the Funding and Settlement Agreement, as implemented by the Plan of Liquidation, and has determined that the Plan of Liquidation is fair and equitable; that it does not discriminate unfairly among the holders of Claims against TNE; and that approval of the Plan of Liquidation and the Funding and Settlement Agreement is in the best interests of the members, subscribers, policyholders, creditors and other holders of Claims against TNE.

12. By separate motion, the Liquidator has requested that this court establish a notice procedure for the hearing on this motion, including the manner of notice to be given and the setting of a deadline for the filing and service of all responses to this motion. The number of parties who have intervened in the Liquidation Proceeding renders it impracticable for the Liquidator to attempt to obtain their assent prior to presenting these motions to the court for approval.

WHEREFORE, the Liquidator requests that this court, after notice and a hearing, approve the Plan of Liquidation, the Funding and Settlement Agreement, and all other agreements and documents submitted in connection therewith; enter an order approving the Plan of Liquidation and the Funding and Settlement Agreement in the form attached as Exhibit G to the Funding and

Settlement Agreement; and grant the Liquidator such other and further relief as is just and equitable.

Dated: November \_\_\_, 2000

Respectfully submitted,

PAULA T. ROGERS,  
COMMISSIONER OF INSURANCE OF THE  
STATE OF NEW HAMPSHIRE,  
AS LIQUIDATOR OF TUFTS HEALTH  
PLAN OF NEW ENGLAND, INC.

By her attorneys,

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